

## **CHAPTER NO. 61**

### **HOUSE BILL NO. 2408**

**By Representatives Bone, Lynn**

**Substituted for: Senate Bill No. 2391**

**By Senator Beavers**

AN ACT to amend Chapter 644 of the Private Acts of 1911; as amended by Chapter 1 of the Private Acts of 1929; Chapter 685 of the Private Acts of 1929; Chapter 86 of the Private Acts of 1935; Chapter 410 of the Private Acts of 1949; Chapter 219 of the Private Acts of 1951; Chapter 176 of the Private Acts of 1961; Chapter 199 of the Private Acts of 1970; Chapter 381 of the Private Acts of 1972; Chapter 279 of the Private Acts of 1972; Chapter 120 of the Private Acts of 1991; Chapter 185 of the Private Acts of 1994; Chapter 20 of the Private Acts of 1999 and Chapter 169 of the Private Acts of 2002; and any other acts amendatory thereto, relative to the charter of the City of Lebanon.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Article II, Section 1 of Chapter 644 of the Private Acts of 1911, as amended by Chapter 685 of the Private Acts of 1929, Chapter 1 of the Private Acts of 1929 (Ex. Sess.), Chapter 86 of the Private Acts of 1935, Chapter 410 of the Private Acts of 1949, Chapter 219 of the Private Acts of 1951, Chapter 199 of the Private Acts of 1970, Chapter 185 of the Private Acts of 1994, and any other acts amendatory thereto, is amended by adding the following language as a new item thereto:

( ) To regulate, by ordinance, the posting and publishing of comments and statements on any website or other means of communication paid for by the City of Lebanon, including restricting publishing or posting anonymous comments, insofar as such regulation is not prohibited by state or federal law.

SECTION 2. Article III, Section 2 of Chapter 644 of the Private Acts of 1911, as amended by Chapter 685 of the Private Acts of 1929, Chapter 1 of the Private Acts of 1929 (Ex. Sess.), Chapter 86 of the Private Acts of 1935, Chapter 410 of the Private Acts of 1949, Chapter 176 of the Private Acts of 1961, Chapter 279 of the Private Acts of 1972, Chapter 381 of the Private Acts of 1972, Chapter 120 of the Private Acts of 1991, Chapter 185 of the Private Acts of 1994, Chapter 20 of the Private Acts of 1999, and Chapter 169 of the Private Acts of 2002, is amended by adding the following language at the end of the first paragraph of such section:

The city council may, in accordance with the provisions of Article IX, obtain the assistance of legal counsel and legal services from sources outside of the city's legal department.

SECTION 3. Article III, Section 10 of Chapter 644 of the Private Acts of 1911, as amended by Chapter 685 of the Private Acts of 1929, Chapter 20 of the Private Acts of 1999, and any other acts amendatory thereto, is amended by adding the following language at the end of the section:

The mayor pro tem, as requested by the city council, may meet once a month, or as otherwise deemed appropriate by the city council, with the city's commissioner of finance to review expenditure information and monitor the city's fiscal activities and payments which are occurring. Pursuant to meetings requested by the city council, at the regular city council meeting on the third Tuesday of each month following such meetings the agenda will provide for the mayor pro tem reporting to the council the current status of fiscal activities for the city as determined from the monthly meeting with the commissioner.

The commissioner and the commissioner's staff shall, during such monthly meetings with the mayor pro tem, review all city expenditures during the previous thirty (30) days and will make available all information requested by the mayor pro tem. The commissioner shall assist the mayor pro tem in the monthly review of the current fiscal activities and records and shall by written or oral report disclose the following information:

(1) Any information or points of concern about fiscal activities which may fall within the areas covered in the comptroller's audit report of July 2003 and subsequent audit reports by the comptroller, if any. The commissioner shall make written recommendations concerning any policy changes that are needed;

(2) All past expenditures (purchase order and purchasing card, or other form of expenditure) during the previous thirty (30) days concerning trips, food expenditures, public relations, advertising and golf activities or any other areas of spending that have previously

been questioned by the comptroller's office in the July 2003 audit and subsequent audit reports by the comptroller;

(3) Any other accounting or purchasing information designated or chosen by the mayor pro tem via specific request or by random review; and

(4) Any expenditures, if any, by the city during the past thirty (30) days that are either not in the fiscal year budget previously approved by the city council or which have been adjusted by the accounting staff (i.e., the movement of funds from one budget account, surplus or otherwise, to another). The commissioner shall explain to the mayor pro tem, for later report review by the city council, the reason that the subject monies were spent or moved by adjustment from the fiscal year budget accounts previously approved by the city council.

Such monthly review meetings between the commissioner and/or the commissioner's staff and the mayor pro tem shall occur at a time convenient and may occur after five o'clock post meridian (5:00 p.m.) if so requested by the mayor pro tem. Other members of the city council shall be notified of the meeting time and place and members are encouraged to attend the review meetings.

The mayor pro tem and commissioner are encouraged to devise a review program, including random review of accounting information.

SECTION 4. Article IX, Section 2 of Chapter 644 of the Private Acts of 1911, as amended by Chapter 685 of the Private Acts of 1929, and any other acts amendatory thereto, is amended by adding the language ", except as otherwise provided herein," in the first sentence of such section between the language "That" and "the".

SECTION 5. Article IX of Chapter 644 of the Private Acts of 1911, as amended, is further amended by adding the following new sections to such article:

Section 3. Notwithstanding any other provision of the city charter to the contrary, if any member of the city council requests outside legal support by written request, including the specific need for legal consultation and the nature of the matter, during the course of a city council meeting, then the subject request shall be placed before the council by ordinance and must be approved by two (2) readings in order to seek the requested outside legal consultation. Upon passage by first reading of an ordinance to obtain outside legal counsel, the city attorney shall inform the members of the city council of any and all knowledge he or she possesses about the subject matter and issue a written opinion about his or her knowledge on the matter within ten (10) days. Upon passage by second reading of the ordinance requesting outside legal advice, the city attorney shall secure the services of any designated attorney in the ordinance. If no attorney is specified by the city council ordinance, then upon final passage the city attorney shall make three (3) recommendations at the next regular city council meeting concerning who should be considered for said legal consultation and the council may choose from such recommended list. The city council shall consider the city attorney's recommendations, at their option, but shall have the full authority and power to hire independent legal counsel as they deem appropriate, and to designate the subject attorney involved. Any city attorney failing to follow this procedure to assist the city council in obtaining legal consultation as stated herein shall be subject to discipline including dismissal for cause.

Section 4. It is the city attorney's responsibility to directly manage, under supervision of the city council, all litigation involving the city. To assist the city council in its need to supervise all litigation, the city attorney shall file an annual report with the council on or before the first regular city council meeting in October of each year. Such report shall describe each type of litigation, the court involved, the names and addresses of the parties, names of all legal counsel involved, and the nature and status of the litigation. The annual report shall include a summary of the above information for all current and active litigation in which the city is a party and shall contain complete details as to the present status of all pending lawsuits and administrative claims involving the city or its officers or employees. All resolution and settlements of litigation shall be reported to the city council within thirty (30) days of resolution by settlement or otherwise and said report shall contain the details of the settlement including monies paid or spent or promised. The annual report shall also contain an analysis by the city attorney of repeated areas of exposure, if any, with recommendations as to how the subject litigation can be avoided in the future with, but not limited to, education and training of city employees in the exposure areas. No settlements involving the payment of city money shall be made without prior approval of the city council. Settlements made by insurance or bonding companies on behalf of the city should not require city council approval; however, the council shall be informed of the details concerning the settlement. In addition to the annual report described above, the city attorney shall also provide quarterly reports at the first regular city council meeting in each of January, April, and July fully summarizing any new litigation, resolutions or actions of any current litigation occurring in the previous ninety-day period. Failure to provide the information required in this section shall be a subject for discipline of the city attorney, including possible dismissal.

Section 5. Except for the provisions allowing the employment of legal consultation for the city council as described in Section 3 of this article, all legal responsibilities and duties for the city shall be conducted by the city attorney and the city attorney's staff, except as otherwise specifically approved by an ordinance passed on two (2) readings before the city council. The mayor, department heads, and the city attorney are prohibited from employing or paying for any outside legal services for matters involving the city except upon specific prior written approval of the city council. This section shall not restrict or require prior authorization concerning the representation of city interests by attorneys employed and paid by insurance or bonding companies acting to protect the city. The ordinance requesting approval of outside legal assistance shall describe the details to be performed, the reason the city attorney or staff cannot perform the duties, and the estimated cost of the outside legal assistance to be employed. If the city attorney believes it is more cost efficient to provide such legal services by the city attorney staff or increases thereof, a written proposal shall be presented for consideration by the city council. However, the city council shall not unreasonably withhold or refuse to provide outside legal assistance as may be requested by the city attorney. To control costs, the city attorney shall personally make every effort to perform the needed legal services before requesting the city council to approve outside legal assistance. Nothing in this section shall be construed to conflict with the attorney-client privilege as defined by law.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of the City of Lebanon. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified to the secretary of state.

SECTION 8. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 7.

**PASSED: May 19, 2005**

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

**APPROVED this 1<sup>st</sup> day of June 2005**

  
PHIL BREDESEN, GOVERNOR